

STATE OF MICHIGAN
COURT OF APPEALS

LYNNANN E. HUNT,

Plaintiff/Counterdefendant-
Appellee,

v

THOMAS B. HUNT,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED
November 1, 2005

No. 256167
Genesee Circuit Court
LC No. 03-245759-DO

LYNNANN E. HUNT,

Plaintiff/Counterdefendant-
Appellant,

v

THOMAS B. HUNT,

Defendant/Counterplaintiff-
Appellee.

No. 258888
Genesee Circuit Court
LC No. 03-245759-DO

Before: Cavanagh P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

This is an appeal in a divorce action. The parties were married for 20 years when plaintiff filed for divorce in February, 2003. On May 28, 2004, the trial court entered a judgment of divorce in which it awarded plaintiff the marital home and spousal support of \$1,075 a month. Defendant was also ordered to pay for plaintiff's healthcare insurance for her lifetime. Defendant appealed from the divorce judgment as of right in Docket No. 256167. After defendant filed his claim of appeal, he filed a motion in the trial court requesting relief from the divorce judgment. On July 19, 2004, the trial court amended the judgment to require defendant to pay for plaintiff's healthcare coverage for only as long as coverage was available under the Consolidated Omnibus Budget Reconciliation Act of 1985, 29 USC 1161 *et seq.* ("COBRA"). In Docket No. 258888, plaintiff filed an application for leave to file a delayed cross appeal from the trial court's original judgment. Because the issues raised in the application did not relate to

the original judgment, but the amended judgment entered on July 19, 2004, this Court granted plaintiff's application as a delayed application for leave to appeal from a postjudgment order and consolidated the two appeals. We affirm the judgment of divorce, as amended on July 19, 2004.

Defendant first challenges the trial court's property distribution. In *McNamara v Horner (After Remand)*, 255 Mich App 667, 669-670; 662 NW2d 436 (2003), this Court set forth the standard of review applicable to a trial court's property distribution:

In a divorce action, this Court's review of the trial court's factual findings is limited to clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Beason, supra* at 802; *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). If the trial court's findings of fact are upheld, we then must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks, supra* at 151-152; *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999); *Draggoo, supra* at 429. A dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Welling, supra* at 709-710; *Draggoo, supra* at 429-430. Further, assets earned by a spouse during the marriage, whether they are received during the existence of the marriage or after the judgment of divorce, are properly considered part of the marital estate. *Vander Veen v Vander Veen*, 229 Mich App 108, 110; 580 NW2d 924 (1998); *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997). Generally, marital assets are subject to division between the parties, but the parties' separate assets may not be invaded. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997).

When distributing marital assets in a divorce, the goal is to reach an equitable distribution of the property in light of all the circumstances. *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). Although the trial court need not divide the assets with mathematical equality, "any significant departure from congruence must be clearly explained by the trial court." *Id.*

The following list of factors are to be considered when dividing property, wherever they are relevant to the circumstances of a particular case:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. *Perrin v Perrin*, 169 Mich App 18, 22; 425 NW2d 494 (1988). There may even be additional factors that are relevant to a particular case. For example, the court may choose to consider the interruption of the personal career or education of either party. The determination of relevant factors will vary depending on the

facts and circumstances of the case. [*McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996).]

Defendant argues that it was inequitable to award the marital home to plaintiff. We disagree. The trial court found that plaintiff contributed most to the acquisition and maintenance of the marital home through gifts from her parents, a worker's compensation settlement, and her own physical work on the home. Additionally, defendant filed for bankruptcy and discharged his liability for the mortgage, leaving plaintiff liable for the balance of the mortgage. Plaintiff also has a history of health problems that prevented her from being able to work full time. Considering the circumstances, the trial court's decision to award plaintiff the marital home was not inequitable.

Defendant also argues that the trial court erred by ordering him to pay plaintiff \$1,075 a month in spousal support, in addition to providing plaintiff with healthcare insurance coverage. This Court reviews a trial court's findings of fact related to an award of spousal support for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). If the trial court's findings are not clearly erroneous, then this Court must then determine whether the dispositional ruling was fair and equitable in light of the facts. *Id.* at 654-655.

The main purpose of spousal support is to balance the incomes and needs of the parties without impoverishing either party. *Id.* at 654. Spousal support is "to be based on what is just and reasonable under the circumstances of the case." *Id.*

Among the factors that should be considered are: (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993); *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991). [*Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).]

The court may take into account any other relevant circumstances. *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996). It should make specific findings of fact on those factors that are relevant to the particular case. *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993).

Consideration of the foregoing factors unquestionably supports an award of spousal support in this case. Plaintiff has a history of health problems that limit her ability to work. The parties disagree on whether plaintiff will ever be able to earn a living with her health limitations. Conversely, defendant has worked for General Motors Corporation for thirty-two years and is in good health. His take-home pay is about \$900 a week, or more than \$3,600 a month. The trial court required defendant to pay plaintiff \$1,075 a month in spousal support and the cost of her healthcare coverage, which was approximately another \$424 a month. In light of defendant's

relatively stable and much higher income, the amount of support and healthcare insurance ordered by the trial court is not unreasonable. Defendant had the ability to pay because of his higher income, he discharged many of his debts in bankruptcy, and he was living with his girlfriend. In contrast, plaintiff's health problems limited her ability to earn a stable income on her own, and she had no other source of income. Even if plaintiff were able to begin working, it did not appear that she could assume a full-time position or earn any significant income with her health limitations. Under the circumstances, the trial court's award of spousal support and healthcare coverage will not impoverish defendant, and was not unreasonable.

In her appeal, plaintiff argues that the trial court erred by amending the divorce judgment relative to healthcare coverage. Defendant moved for relief from the original judgment under MCR 2.612(C)(1). This Court reviews a trial court's decision to grant relief from a judgment under MCR 2.612(C)(1) for an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

Although the original trial judge's written opinion required defendant "to maintain [plaintiff] on his insurance through COBRA and pay the same," the original divorce judgment awarded plaintiff lifetime healthcare coverage. Because the original trial judge did not provide that defendant was required to provide plaintiff with lifetime healthcare coverage, we agree that an amendment to conform the judgment to the original trial judge's decision was warranted. The judgment, as amended, provides that defendant is obligated to provide healthcare insurance for plaintiff until the availability of coverage under COBRA expires. It was a proper exercise of the trial court's discretion to amend the judgment to conform with the original judge's written opinion.

Plaintiff argues that the trial court lacked jurisdiction to amend the divorce judgment because defendant had already filed a claim of appeal from the judgment. Generally, a trial court may not amend a judgment that has been appealed to this Court. *Yeo v State Farm Fire & Casualty Ins Co*, 242 Mich App 483, 485; 618 NW2d 916 (2000). However, MCR 7.208(A) allows a trial court to amend a judgment that has been appealed by stipulation of the parties. At the hearing on defendant's motion to amend the judgment, plaintiff's attorney agreed that portions of the judgment should be amended to conform with the original judge's written

opinion. The trial court had jurisdiction to amend the judgment consistent with the parties' agreement. To the extent that plaintiff opposed the amendment relative to healthcare coverage, because we agree that the amendment was proper to conform with the original trial judge's written opinion on this issue, in the interests of judicial economy, we affirm the trial court's May 28, 2004, judgment, as amended on July 19, 2004.¹

Affirmed as amended, consistent with this opinion.

/s/ Mark J. Cavanagh

/s/ Michael R. Smolenski

/s/ Brian K. Zahra

¹ As the trial court later noted when denying plaintiff's post-appeal motion for relief, if plaintiff desires relief from this portion of the judgment, she may request that relief in an appropriate motion after appeal.